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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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Refer Reply To:

CC:PA:02

PLR-114800-20

Date:

December 22, 2020

Legend

Taxpayer =

Platform =

Customers =

Providers =

Dear _____:

This is in response to the June 30, 2020 ruling requested submitted on your behalf by your authorized representative concerning your federal income tax reporting obligations under sections 6050W and 6041 of the Internal Revenue Code (Code). Specifically, you requested rulings on the following issues:

1. Is Taxpayer a third party settlement organization under section 6050W with respect to rental transactions it settles on behalf of Providers via its Platform; and
2. Is Taxpayer responsible for reporting rental payments collected on behalf of Providers via its Platform under section 6041?

FACTS

Taxpayer provides an online suite of tools and services that helps facilitate relationships between landlords and property managers (collectively, Providers) and tenants (Customers). Specifically, Taxpayer's online platform, _____ (Platform)

to Customers. The properties are owned or managed by Providers. In order to use the Platform, Providers and Customers must agree to the terms and conditions outlined in the Platform's Terms & Conditions, as well as its Terms of Service.

The Platform provides Customers the ability to review rental listings to determine the availability and pricing of rental properties located in different geographic regions. The Platform also allows Customers to submit rental applications, consent to background and credit screenings, submit documentation, enter into leases with Providers, and make rental payments. Customers must pay a fee to use the Platform's services. The fees do not include any deposits, payments, or fees that may be requested by the Provider, and the Provider may require additional

The Platform allows Providers to list properties, find Customers, accept rental applications from Customers, receive certain consumer credit and public record information, offer and enter into leases with Customers and receive rental payments from Customers.

Taxpayer's Platform offers a web-based payment portal to facilitate the payments between Customers and Providers (Payment Portal). The Platform uses a third-party payment processor to process payments made using the Payment Portal. Customers may initiate both one-time and recurring payments through the Payment Portal using various payment methods (e.g., credit card, debit card, ACH transfer, etc.). Providers may send electronic notifications to Customers related to lease obligations, rental amounts, and renewals, using the Payment Portal. In order to facilitate payments, Taxpayer creates an account with the third-party payment processor on behalf of each Provider and Customer. If a Customer initiates a payment using the Payment Portal, the third-party payment processor then processes the payment and deposits the requisite amounts into the Provider's bank account. Providers and Customers must register for and create an account on the Platform in order to use the Payment Portal services.

Taxpayer does not act as

and does not guarantee any results from using the Platform. Taxpayer does not independently verify any Providers or Customers, does not perform , and does not make any representations or warranties as to the quality or trustworthiness of Providers and Customers. Taxpayer also does not make any

on the Platform. Taxpayer does not provide legal advice to Providers or Customers and does not . In addition, Providers are solely responsible for establishing their own standards and criteria for selecting suitable Customers as well as

determining whether a Customer satisfies such criteria. Taxpayer is not a party to any agreements between Providers and Customers that are entered into using the Platform. Taxpayer also does not receive a commission with respect to any services provided via the Platform. In sum, the primary aim of the Platform is to facilitate transactions between Providers and Customers.

LAW & ANALYSIS

Section 6050W

Section 6050W of the Code, as enacted by the Housing Tax Assistance Tax Act of 2008, requires payment settlement entities to file an information return for each calendar year with respect to payments made in settlement of reportable payment transactions. The annual information return must set forth (1) the name, address, and taxpayer identification number (TIN) of the participating payee to whom payments were made and (2) the gross amount of the reportable payment transactions with respect to that payee. I.R.C. § 6050W(a). The regulations define gross amount to mean the total dollar amount of the aggregate reportable payment transactions for each participating payee, without regard to any adjustments for credits, cash equivalents, discount amounts, fees, refunded amounts, or any other amounts. Treas. Reg. § 1.6050W-1(a)(6). Taxpayers required to make returns under section 6050W do so by filing Forms 1099-K, Payment Card and Third Party Network Transactions.

Section 6050W covers two types of reportable payment transactions: (1) payment card transactions, and (2) third party network transactions. I.R.C. § 6050W(c). A payment settlement entity in the payment card context is a merchant acquiring entity; in the third party network context, it is a third party settlement organization (TPSO). I.R.C. § 6050W(b)(1).

The Code and regulations define a merchant acquiring entity as the bank or other organization with the contractual obligation to make payments to participating payees in payment card transactions. A payment card transaction is any transaction in which a payment card is accepted as payment. I.R.C. § 6050W(b)(2)-(3), 6050W(c)(2); Treas. Reg. § 1.6050W-1(b)(1)-(2).

The Code and regulations define a TPSO as the central organization that has the contractual obligation to make payments to the participating payees of third party network transactions. I.R.C. § 6050W(b)(3); Treas. Reg. § 1.6050W-1(c)(2). A third party network transaction is any transaction that is settled through a third party payment network. I.R.C. § 6050W(c)(3). A central organization is a TPSO with a reporting obligation if it provides a third party payment network that allows purchasers to transfer funds to providers of goods and services. Treas. Reg. § 1.6050W-1(c)(2).

A third party payment network is any agreement or arrangement that (i) involves the establishment of accounts with a central organization by a substantial number of

providers of goods or services who are unrelated to the central organization and who have agreed to settle transactions for the provision of goods and services with purchasers according to the terms of agreements; (ii) provides standards and mechanisms for settling transactions; and (iii) guarantees payments to the providers of goods and services in settlement of transactions with the purchasers. I.R.C. § 6050W(d)(3); Treas. Reg. § 1.6050W-1(c)(3). Neither the Code nor the regulations defines what constitutes a “substantial number” of providers for the purposes of defining a third party payment network. However, in its technical explanation of the Housing Assistance Tax Act of 2008, the Joint Committee on Taxation interpreted the term “substantial number” to mean more than 50 providers of goods and services. Joint Committee on Taxation, Technical Explanation of Division C of H.R. 3221, The “Housing Assistance Tax Act of 2008” as Scheduled for Consideration by the House of Representatives on July 23, 2008 (JCX-63-08) at 61, July 23, 2008.

A participating payee, in the case of a third party network transaction, is any person who accepts payment from a third party settlement organization in the settlement of such transaction. I.R.C. § 6050W(d)(1)(A)(ii).

A TPSO is not required to report third party network transactions for a participating payee unless the amount to be reported exceeds \$20,000 and the aggregate number of transactions with that participating payee exceeds 200. I.R.C. § 6050W(e).

Section 6041

Section 6041(a) provides that a person making payments in the course of a trade or business to another person of “rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which certain other Code provisions apply)” of \$600 or more in any taxable year must report the payment on Form 1099-MISC, Miscellaneous Income.

If a payment is subject to reporting under both sections 6041 and 6050W, then the payment must be reported in accordance with the provisions of section 6050W, rather than section 6041. Treas. Reg. § 1.6041-1(a)(1)(ii). For example, if a restaurant makes a payment of \$600 to a repairman by credit card, then the restaurant is not required to report the payment on Form 1099-MISC. Treas. Reg. § 1.6041-1(a)(1)(v), Example 1. Instead, the payment settlement entity that is responsible for ultimately distributing the funds to the repairman is responsible for reporting the payment on Form 1099-K in accordance with the provisions of section 6050W.

Analysis

Taxpayer is a TPSO with respect to payments made through its Platform because it is a central organization that has the contractual obligation to make payments to the

participating payees of a third party network transaction and provides a third party payment network that allows purchasers to transfer funds to providers of services.

Taxpayer has established a third party payment network because it has an arrangement: (1) through which a substantial number of providers of services who are unrelated to Taxpayer have established accounts with Taxpayer and have agreed to settle transactions for the provision of services; (2) which provides standards and mechanisms for settling transactions, as provided in the contractual agreement between Taxpayer and Providers; and (3) which guarantees that persons providing services pursuant to this arrangement will be paid for providing these services, as provided in the contractual agreement between Taxpayer and Providers.

Here, the providers of services are the Providers who make accommodations available to Customers. Although the term “goods and services” is not defined in section 6050W or the regulations promulgated thereunder, the accommodations provided and related activities performed by Providers fall within the concept of “goods and services” as contemplated by section 6050W.¹ A substantial number of these Providers, who are unrelated to Taxpayer, have established accounts with Taxpayer to settle transactions for the provision of their services. The standards and mechanisms for settling transactions between Providers and Customers for the provision of these services are provided in the contractual agreement between Taxpayer and the Providers, along with a guarantee that Providers will be paid for their provision of services for any payments that are initiated through Taxpayer’s Payment Portal. Therefore, Taxpayer has established a third party payment network and is a TPSO with respect to transactions settled through its Platform.

As a TPSO, Taxpayer is required to report third party network transactions for a participating payee – here, a Provider – when the amount to be reported exceeds \$20,000 and the aggregate number of transactions with that Provider exceeds 200. Taxpayer must report the gross amount of all reportable payment transactions with respect to that Customer on a Form 1099-K.

¹ Although not determinative, a 2004 revenue procedure that classifies businesses by Merchant Category Codes according to whether they predominantly furnish services or goods supports the position that Providers are providing services. Rev. Proc. 2004-43, 2004-2 C.B. 124 (obsoleted by T.D. 9699, removing regulations relating to information reporting and backup withholding for the Qualified Payment Card Agent Program). Under the revenue procedure, the following type of business, among others, are considered to predominantly provide services: “Real Estate Agents and Managers – Rentals.” Providers fit within this business type; thus Providers can be viewed as predominantly providing services. Moreover, business which provide other types of rentals are also considered as predominantly providing services, including car rentals, boat rentals and leases, clothing rentals, equipment rental, truck and trailer rentals, recreational vehicle rentals and video tape rentals. Rev. Proc. 2004-43 was obsoleted following the enactment of section 6050W and the payment card reporting regime, but it still provides guidance in determining whether a particular business is a type that should be classified as one predominantly furnishing services.

Because this ruling concludes the Taxpayer has established a third party payment network and is a TPSO with respect to transactions settled through its Platform, this ruling does not address whether Taxpayer is responsible for reporting payments collected on behalf of Providers through its Platform under section 6041. Regardless of the conclusion on that issue, Taxpayer would be subject to reporting under section 6050W for the transactions settled through its Platform. Treas. Reg. § 1.6041-1(a)(1)(iv).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Melissa A. Henkel
Senior Technician Reviewer
(Procedure & Administration)

cc: